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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,213	01/04/2002	Robert J. Schinski	SCBO102	2004

7590 11/19/2003

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EXAMINER

KUHNS, ALLAN R

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/039,213	SCHINSKI, ROBERT J.	
	Examiner	Art Unit	
	Allan Kuhns	1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) : . | 6) <input type="checkbox"/> Other: . |

1. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are confusing because the final clause of claim 1 reads "said side wall" (singular) while the initial clause of this claim reads "a plurality of side walls". Also, it appears that "or" in clause b) of claim 1 should be "on". Clarification is required.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vyprachticky in view of Berger et al. Vyprachticky discloses or suggests the basic claimed method of forming a pillar candle including (1) selecting a mold made of a plurality of side walls having a central void, the mold having a top opening, (2) assembling the mold on a support surface, (3) pouring or introducing a candle forming composition into the central void of the mold, (4) allowing the composition to cool, and (5) disassembling the side wall or walls of the mold from the pillar candle. Vyprachticky appears not to teach the aspect of using a gel composition to form the candle, but such is taught by Berger et al. It would have been obvious to one of ordinary skill in the art to use the composition taught by Berger et al. in the method of Vyprachticky since Berger et al. teach that such a composition is useful for forming a pillar candle.

Vyprachticky illustrates a mold having a smooth inner surface, as in claim 3, and the side wall or surface materials of claims 4 and 5 are well known and their use would have been obvious to one of ordinary skill in the art in order to form a smooth-surfaced candle. Vyprachticky also illustrates a mold having a bottom opening, as in claim 6, in Figure 3.

4.Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vyprachticky in view of Berger et al. as applied to claims 1 and 3-6 above, and further in view of Freeman et al. Freeman et al. teach the forming of a candle in the shape of an eight-sided polyhedron at column 3 lines 57-59. It would have been obvious to one of ordinary skill in the art practicing the process of Vyprachticky to form a candle in this shape taught by Freeman et al. since Freeman et al. indicate that such shapes are useful.

5.Claim 2 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is 703-308-3462. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on (703) 305-5493. The fax phone number for the organization where this application or proceeding is assigned is 703 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0661.

Allan R. Kuhns
ALLAN R. KUHNS
PRIMARY EXAMINER AU 1732
11-14-03